

1 UNITED STATES BANKRUPTCY COURT

2 CENTRAL DISTRICT OF CALIFORNIA (OAKLAND DIVISION)

3 Case No. 4:19-bk-40193

4 Adv. Case No. 19-04057

5 - - - - - x

6 In the Matter of:

7
8 PACIFIC STEEL CASTING COMPANY LLC,

9
10 Debtor.

11 - - - - - x

12 SARAH H. LITTLE, Chapter 7 Trustee,

13 Plaintiff,

14 v.

15 SPEYSIDE FUND, LLC, A Delaware limited liability

16 company, et al.

17 Defendants.

18 - - - - - x

19 United States Bankruptcy Court

20 1300 Clay Street, Suite 300

21 Oakland, CA 94612

22
23 October 27, 2022

24 1:33 PM

1 B E F O R E:

2 HON ROGER L. EFREMSKY

3 U. S. BANKRUPTCY JUDGE

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5 ECRO: UNKNOWN

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1 HEARING re Trustee's Motion to Revise Order Granting UHY,
2 LLP's Motion for Summary Judgment [242]

3
4 HEARING re Defendant's Opposition filed by Defendant UHY,
5 LLP, A New York limited liability partnership [248]

6
7 HEARING re Joint Motion for Certification of Partial Final
8 Judgment and Entry of Temporary Stay filed by Sarah
9 Little filed by Defendant UHY, LLP, a New York limited
10 liability partnership [252]

11
12 HEARING re Defendant's Opposition filed by Defendant UHY,
13 LLP, a New York limited liability partnership [270]

14
15 HEARING re Defendants' Opposition filed by Defendants
16 Speyside Fund, LLC, The Alcast Company, Krishnan
17 Venkatesan, Jeffrey Stone, Eric Wiklendt, Jerry Johnson,
18 Brian Holt, Steve Wessels, RataxasCo LLC, Speyside Equity
19 LLC, Kevin Daugherty, individually and as Trustee of the TD
20 2011 Trust and PD 2011 Trust, and Robert C. Sylvester [272]

21
22 HEARING re Status Conference
23
24
25

1 HEARING re Status Conference re Creditor's Objection to
2 Claim #2 of Claimant Second Street Properties filed by
3 Speyside Fund LLC [67]

25 Transcribed by: Benjamin Graham, CET #1394

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SARAH LITTLE, ESQ.

P R O C E E D I N G S

THE COURT: Turning to the remaining matter on calendar, calling the matter of Little v. Speyside Fund, Case Number 19-04057 and Pacific Steel Casting Company LLC, Case Number 19-40193.

MS. BAGDANOV: Good morning, Your Honor. Jessica Bagdanov, on behalf of Sarah Little, the Chapter 7 trustee and plaintiff. Ms. Little is also present in court.

THE COURT: All right. Good morning.

MS. QUADROZZI: Good morning, Your Honor. Jaye Quadrozzi, on behalf of UHY.

THE COURT: All right. Good morning.

MR. TORAL: Good morning, Your Honor. This is Todd Toral, from the law firm of Jenner & Block, representing the Speyside defendants.

THE COURT: All right. Good morning, Mr. Toral.

MR. LAUTER: Good morning, Your Honor. Mic Lauter, of Sheppard Mullin, for Second Street Properties.

THE COURT: All right. Good morning, Mr. Lauter.

MR. LAUTER: Good morning.

THE COURT: Any other appearances?

MS. LITTLE: Sarah Little, Chapter 7 trustee.

THE COURT: All right. Good morning, Madam Trustee. All right. Taking up Line Item A in the matter of trustee's motion to revise the order granting UHY, LLP's

1 motion for summary judgment, in light of the fact that the
2 trustee and UHY want the Court to rule actually on UHY's
3 motion for summary judgment, the Court will do that and is
4 in the process of preparing a decision.

5 With that being said, I think it would be
6 appropriate just to take this motion off calendar for the
7 time being until that is issued and the parties can look at
8 that, and then if counsel wants to go forward, it could be
9 re-noticed. Does that make sense?

10 MS. BAGDANOV: Yes, Your Honor. That's acceptable
11 to the trustee and makes sense.

12 THE COURT: All right.

13 Ms. Quadrozzi?

14 MS. QUADROZZI: Your Honor, that's acceptable --
15 that is acceptable to UHY, Your Honor.

16 THE COURT: All right. Very good. Thank you.
17 All right. Next is Line Item B, which is the joint motion
18 for certification of partial final judgment and entry of
19 temporary stay filed by Sarah Little filed by defendant UHY,
20 LLP, a New York limited liability partnership, defendant's
21 opposition to the same.

22 MS. BAGDANOV: Yes, Your Honor. Did you want me
23 to proceed?

24 THE COURT: That would be great. Thank you.

25 MS. BAGDANOV: Sure. I think -- well, starting

1 where Your Honor just left off, it may -- the timing of this
2 motion may be a little complicated, if the Court is going to
3 issue a different memorandum decision on the UHY motion for
4 summary judgment. But I'd like to present the motion as it
5 was filed.

6 You know, undoubtedly this question is within the
7 sound discretion of Your Honor's judgment on what will
8 expedite the litigation and what will streamline the
9 litigation among these parties. You've been presented with
10 case law from both sides really that different courts, all
11 within the Ninth Circuit, have considered different sets of
12 facts on whether allowing an interlocutory appeal to proceed
13 earlier than a trial on remaining claims makes sense where
14 there is some overlapping facts and some overlapping law.

15 This -- in contrast to some of the cases cited by
16 defendants, I think this is a complex case where very
17 threshold contested issues have been decided that impact the
18 litigation. And, you know, under some of the cases, courts
19 say, well, if this is a common theme throughout the entirety
20 of the litigation, why not just wait until the end,
21 adjudicate the remaining claims, go to trial on them and
22 then have one appeal.

23 In this circumstance, Your Honor, I would invite
24 the Court to note the Texaco Ninth Circuit case that was
25 cited in our brief that talks about -- it was a real estate

1 purchase contract case, breach of contract on both sides,
2 counterclaims and there was a 54(b) motion that was filed
3 and the court explained although the claims disposed of
4 require proof of the same facts on the remaining
5 counterclaims, the legal issues now appealed will streamline
6 the ensuing litigation.

7 And there is another case cited, U.S. Fidelity &
8 Guaranty Company v. Lee Investments. It was an insurance
9 dispute between the insurer and an employer seeking
10 rescission of a worker's compensation policy. And that
11 Ninth Circuit court explained due to the prior delay,
12 complexity and contentiousness of the litigation, in order
13 to avoid uncertainty and inconsistent verdicts, there's no
14 just reason for delay. And both the Supreme Court and the
15 Ninth Circuit has noted that certification is proper even
16 when one or more claims have a presence of similar facts or
17 law when the case is complex and there is an important or
18 controlling legal issue that cuts across a number of the
19 claims.

20 And I would submit, Your Honor, that that's the
21 case here. The issue of withdrawal liability is a threshold
22 issue. I don't think that anybody can dispute that. We've
23 all stipulated to that fact as a matter of practice in this
24 case. And this decision will -- I think appealed now will
25 streamline the litigation in the sense that if the

1 bankruptcy court, if Your Honor, if the decision is
2 affirmed, then that narrows the issues remaining for trial.

3 If the bankruptcy court is reversed, it clarifies
4 what facts the trustee may rely upon not only on the
5 previously dismissed claims but also the remaining claims.
6 If we go to trial now on the remaining -- it's essentially
7 \$4 million of fraudulent transfer claims and related legal
8 theories. We get a judgment one way or the other. The
9 trustee will likely appeal the breach of fiduciary duty
10 dismissal at the end of the case and then it just -- it
11 doesn't make sense, Your Honor. I think appeal now is the
12 best strategy for deciding complex threshold issues,
13 streamlining litigation and avoiding piecemeal appeals. And
14 I don't think Speyside's answer of letting the remaining
15 claims go to judgment against the trustee make sense.

16 In lieu of that, I suppose the alternative would
17 be to go to trial on the remaining claims. And I just think
18 that in consideration of judicial economy, the importance of
19 these complex threshold legal issues, an appeal now is the
20 best way to streamline the litigation.

21 THE COURT: Okay. All right.

22 Mr. Toral?

23 MR. TORAL: Thank you, Your Honor. It will come
24 as no surprise that we disagree with Ms. Bagdanov's
25 arguments. Our response makes clear that Rule 54(b)

1 certification is an extreme procedure to be applied
2 sparingly and only when an immediate appeal is clearly
3 superior to following the default order of events.

4 The trustee and Second Street do not dispute that,
5 as movants, they bear the burden of showing that there is a
6 compelling need for certification. And all I have heard in
7 the oral argument and all that I have read in the papers is
8 plaintiffs believe it doesn't make sense. But their
9 argument fails on its own terms. Instead of carrying the
10 heavy burden of establishing that interlocutory appeal is
11 warranted, movants demonstrate that summary judgment should
12 enter against trustee's remaining claims.

13 You heard Ms. Bagdanov now. She is basically
14 making an argument that our motion for summary judgment was
15 underinclusive. She says that the withdrawal liability is a
16 threshold issue and can't be disputed across an array of the
17 claims. They have demonstrated that summary judgment should
18 enter against trustee's remaining claims. In reply, the
19 trustee doubles down, as you heard Ms. Bagdanov just now, on
20 the inability to prosecute her remaining claims now that the
21 Court has dismissed, with prejudice, the withdrawal
22 liability theory.

23 She says that as a result of the Court's dismissal
24 orders, quote, this is from the reply brief, "She cannot
25 effectively prosecute the remaining claims for relief."

1 That is an argument that our motion was underinclusive and
2 that all the claims should be dismissed. If the trustee
3 maintains that she cannot proceed on any claims unless and
4 until the appellate panel reverses some part of this Court's
5 orders, the trial level proceedings on these claims are at
6 an end. They are over. By the trustee's own admission, the
7 Court should enter summary judgment against the remaining
8 claims.

9 An appeal could then immediately follow and, if
10 any claims are reinstated, those claims could be tried to
11 final judgment. That result would be the most streamlined
12 outcome here and would take the trustee as the master of her
13 complaint at her word. The Speyside defendants laid all of
14 this out in their response. But the trustee did not join
15 issue on reply.

16 The Speyside defendants cited U.S. v. Grayson, a
17 Ninth Circuit decision that had the following quote in it:
18 "A district court may grant summary judgment if the losing
19 party has had a full and fair opportunity to ventilate the
20 issues involved in the motion." Your Honor will recall the
21 sequence of this particular case. You will recall that the
22 trustee filed a motion for summary adjudication. I believe
23 it was in October of 2020. That was denied based on Rule 57
24 -- excuse me, 56(f).

25 The judge will recall that we, the Speyside

1 defendants, filed the objection to the proof of claim of
2 Second Street and that was fully ventilated and that full
3 ventilation gave rise to the limited joinder by Second
4 Street and the cross-motions for summary judgment. There
5 was significant briefing, significant oral argument, all
6 leading to the inexorable conclusion that there was a full
7 ventilation of these issues. As such, the Court should not
8 grant 54(b) relief.

9 Instead the Court should take the trustee at her
10 word and enter summary judgment against all of the remaining
11 claims so that this case at the trial court level can come
12 to an end. But if the Court is not willing to do that, not
13 willing to enter summary judgment now because the Speyside
14 defendants were underinclusive in bringing their motion for
15 summary judgment against the claims that have been -- that
16 were alleged by the trustee, Rule 54(b) certification still
17 should not issue.

18 54(b) certification should only issue upon
19 compelling need which movants -- which as movants, the
20 trustee and second Street bear the burden to show. A
21 compelling need is required to avoid introducing the
22 piecemeal appeals that judicial economy abhors. Movants
23 have no real explanation for why certification is necessary
24 now beyond what I think I've heard today is because Ms.
25 Bagdanov thinks it makes sense. Instead their central

1 argument for certification cuts against them. They
2 emphasize repeatedly in reply that what concerns then is
3 this supposed overlap of facts between the dismissed claims,
4 particularly concerning fiduciary duties, and the remaining
5 ones.

6 First, there's a fundamental problem with this
7 framing. Most of this argument contends that because the
8 fiduciary duty claims were dismissed, at trial the trustee
9 might not be able to introduce any facts that could have
10 supported those claims even if said facts support the
11 trustee's remaining claims. That is plainly wrong. The
12 Court's orders dismissed the withdrawal liability theory.
13 But the other facts the trustee expresses concern about,
14 like the defendants allegedly disguising equity
15 contributions as debt, were not dismissed and may, subject
16 to relevance and other usual objections, be introduced at
17 trial.

18 Second, even if the trustee's factual concerns
19 were well-taken, that is an argument against certification,
20 not for it. The Ninth Circuit advises that when the
21 dismissed claims and the remaining claims both rely on
22 overlapping or interlocking facts, Rule 54(b) certification
23 is inappropriate. Permitting an interlocutory appeal in
24 such circumstances would necessarily duplicate the appellate
25 court's work. The Court would have to review those

1 overlapping facts during the interlocutory appeal and then
2 again during the post-trial appeal. That duplicated effort
3 is exactly what movants ask for here. They envision that,
4 upon interlocutory appeal, the bankruptcy appellate panel
5 will review the facts supposedly underlying both the
6 fiduciary duty claims and the remaining sub-debt claims,
7 reinstate the fiduciary duty claims and then those claims
8 and the remaining claims may be tried and a post-trial
9 appeal will be taken up for a second time on the same facts.
10 That is the exact kind of redundancy that is anathema to
11 Rule 54(b).

12 As a final point, Your Honor, certification should
13 only issue if the movants demonstrate they would suffer
14 undue prejudice absent immediate appeal. Once again their
15 arguments cut against the them. The only prejudice argument
16 the trustee advances is that she cannot effectively go
17 forward on her remaining claims given the Court's orders.
18 That inability to proceed is not cause for immediate appeal;
19 rather, it is cause for dismissal of her remaining claims.
20 And with that, Your Honor, I'd be prepared to submit.

21 THE COURT: All right. Thank you, Mr. Toral.
22 Ms. Bagdanov?

23 MS. BAGDANOV: Thank you, Your Honor. Just a few
24 points. The first thing, I'm a little confused case in the
25 conclusion of Mr. Toral's presentation, he's talking about

1 how the trustee can still use the facts, you know,
2 underlying the trustee's breach of fiduciary duty claim at a
3 subsequent trial regarding the -- let's just call it the
4 later distributions that are still alive, if you will, in
5 the complaint. And I don't see how that's true.

6 Your Honor's dismissal of the breach of fiduciary
7 duty or judgment, summary judgment, on the breach of
8 fiduciary duty claim was not limited to a particular legal
9 theory. Your Honor has clarified that it is a dismissal
10 with prejudice of the entire claim. And the entire claim
11 encompasses -- and I think this is in our brief, so I don't
12 want to reiterate it over and over again.

13 But the breach of fiduciary duty claim encompassed
14 a number of factual theories, including the ones that
15 underlie the remaining claims. And if that claim is
16 dismissed with prejudice, I don't see realistically how the
17 trustee can still go forward on facts that have been
18 dismissed with prejudice with respect to a legal claim.

19 Also, you know, Speyside claims that the trustee
20 stating that we cannot effectively prosecute the remaining
21 claims means that we should just have judgment entered
22 against the trustee. And, you know, I've learned some
23 things watching my four-year-old daughter's preschool
24 programs, and one of them is Daniel Tiger. And he says two
25 things can be true at the same time, and it's a lesson that

1 I think adults take for granted, but small kids have a hard
2 time learning that. And the trustee will be admittedly
3 hamstrung at trial on the remaining claims without the
4 voluminous set of facts that we believe support the
5 subsequent -- not subsequent, the later fraudulent transfer
6 claims and related legal theories.

7 On the other hand, the trustee still wants to go
8 forward with trial, if that is what is going to happen. And
9 within your discretion, either we go to trial now and see
10 what happens on the remaining claims or not. But I don't
11 think that the sua sponte entry of summary judgment on the
12 remaining claims is appropriate because two things can be
13 true. We can have a set of facts gone from the claim that
14 hamstring the trustee's ability to go forward admittedly.
15 But she can also put on the case that she has and do her
16 best at the trial and go forward. Your Honor --

17 THE COURT: Right. So that's --

18 MS. BAGDANOV: Yeah.

19 THE COURT: What I'm understanding is you may be
20 hamstrung based on the Court's ruling on the APA that there
21 was no assumption or indemnification on the part of the
22 Speyside with regard to the seller's withdrawal liability
23 and that may hamstring the trustee, so to speak. But you're
24 not saying you can't effectively go forward and prosecute
25 the remaining claims, correct?

1 MS. BAGDANOV: Yes, Your Honor. And I don't want
2 that thrown in my face because I think our reply brief does
3 say that the trustee cannot effectively go forward. And
4 maybe that was too strong. I think that you're right, that
5 we still intend to prosecute them. We may have one hand
6 behind our back and one eye closed, and that's okay. But we
7 intend to go forward if that is what Your Honor decides.

8 The concern that I have is the potential effect of
9 the summary judgment decision on the trustee's ability to
10 present facts, not on the legal issue of withdrawal
11 liability, but all of these underlying facts that we alleged
12 supported the breach of fiduciary duty claim may be kicked
13 out of evidence at a trial on the remaining claims. Maybe
14 they won't be. But it's just something to note, Your Honor,
15 that the trustee feels that the universe of evidence has
16 been limited and so be it.

17 THE COURT: Okay. All right. Is the matter
18 submitted?

19 MS. BAGDANOV: Your Honor, I don't think so. The
20 only thing has to do with the UHY component, and from my
21 perspective it's submitted. But I didn't want Ms. Quadrozzi
22 to not get a chance.

23 THE COURT: All right.

24 Ms. Quadrozzi, you have something you wish to add?

25 MS. QUADROZZI: Your Honor, I think Mr. Toral ably

1 argued the same things that we would say. The only issue
2 that we have is as it relates to Your Honor's comment at the
3 beginning of this hearing which is that you are taking a
4 look and issuing an opinion on UHY's motion for summary
5 judgment.

6 To some extent obviously that impacts the
7 trustee's motion in terms of trying to modify the order.
8 But it also may impact this particular motion, and so it's
9 the trustee's motion, so I guess it's her position to decide
10 how it would impact this. But obviously depending on what
11 Your Honor's ruling is, that may be something that we will
12 seek leave to respond to at that time.

13 THE COURT: Okay. But you're prepared to submit
14 now at least on this record?

15 MS. QUADROZZI: Yes, Your Honor.

16 THE COURT: All right.

17 Mr. Toral?

18 MR. TORAL: Yes, Your Honor. Thank you.

19 THE COURT: All right. Very good. All right.

20 Before the Court is the joint motion for certification of
21 partial final judgment -- excuse me. Let me just say, Mr.
22 Lauter, do you wish to be heard?

23 MR. LAUTER: Oh, Your Honor, we represent Second
24 Street Properties. We're joint movants with Ms. Bagdanov's
25 clients in the motion for certification. I'd just note that

1 the existing summary judgment rulings, the memorandum
2 decision, disposes of the issues for which we intervened
3 entirely. So the balance of the case that's remaining
4 doesn't concern Second Street. We did, out of concern for
5 the flexible finality rule in bankruptcy, file a notice of
6 appeal. And I'll just note, I think we put in declaration
7 about this, that the BAP in the appeal asked us to let them
8 know what you decide today, Your Honor --

9 THE COURT: Right.

10 MR. LAUTER: -- in connection with deciding
11 whether it's --

12 THE COURT: I think that's --

13 MR. LAUTER: Yeah.

14 THE COURT: Okay. Yeah. I just wanted to give
15 you an opportunity there. So thank you.

16 MR. LAUTER: Sure.

17 THE COURT: All right. So the matter is
18 submitted. All right. This is the Court's ruling then.

19 Before the Court is the joint motion for
20 certification of partial final judgment under Rule 54(b) and
21 entry of a temporary stay filed by the trustee and Second
22 Street Properties, the "motion" and the "moving parties."
23 (Docket Numbers 252 to 253).

24 The motion is directed at the order granting UHY,
25 LLP's motion for summary judgment and the order granting

1 partial summary judgment for the Speyside defendants and
2 denying trustee's motion, collectively the "summary judgment
3 orders." (Dockets Number 235 and 247).

4 These orders were entered following the entry of
5 the memorandum decision on the cross-motions for summary
6 judgment by the Speyside defendants, the trustee and Second
7 Street. (Docket Number 231).

8 The parties are familiar with the factual and
9 legal issues in this litigation and they will not be
10 described here in any detail. First, very briefly, some
11 background. The trustee's first amended complaint stated
12 multiple claims for relief against the Speyside defendants
13 and one claim for relief against UHY. (Docket Number 70).

14 The parties agreed to file motions for summary
15 judgment directed primarily at two discrete issues. (Docket
16 Number 162).

17 These issues were, one, whether the debtor,
18 Pacific Steel, agreed under the asset purchase agreement to
19 directly assume or indemnify Second Street for Second
20 Street's contingent withdrawal liability and, two, if
21 debtor, Pacific Steel, has this liability, what is its
22 amount for purposes of the trustee's claim against the
23 Speyside defendants. The summary judgment motion directed
24 at the second issue has not been ruled on because the ruling
25 on the first issue renders the second issue moot.

1 Second Street has filed a proof of claim in the
2 Pacific Steel case in which it seeks some \$34 million based
3 on its indemnification and assumption theories, according to
4 its interpretation of the asset purchase agreement. The
5 Speyside defendants urged the trustee to object to this
6 claim, but she has declined to do so. They contend that the
7 trustee is using this proof of claim as "price support" for
8 her damage theories for several claims for relief in the
9 adversary proceeding. Second Street was permitted to
10 intervene in the summary judgment process to join the
11 trustee in addressing the first issue only. (Docket Number
12 163).

13 The Speyside defendants' motion for partial
14 summary judgment as to facts of liability was directed at
15 the 2nd, 7th, 8th, 9th, 11th and 14th claims for relief.
16 (Docket Number 176).

17 These claims allege fraudulent transfers, breach
18 of fiduciary duty and aiding and abetting breach of
19 fiduciary duty. A core aspect or central allegation for the
20 viability of each of these claims was the contingent
21 withdrawal liability as that term is defined in the Court's
22 memorandum decision. The memorandum decision explained why
23 the Court granted the Speyside defendants' motion and denied
24 the trustee and Second Street's motion. (Docket Number
25 231).

1 In agreeing with the Speyside defendants'
2 interpretation of the asset purchase agreement, the decision
3 effectively eliminated the trustee's \$34 million damage
4 theory. The Court then entered its order dismissing these
5 claims with prejudice. (Docket Number 247).

6 This ruling resolved "a significant portion of the
7 claims and a large measure of the damages" as the trustee
8 has described it. (See Docket Number 253, at Page 3, Lines
9 5 through 7).

10 The UHY motion for summary judgment was directed
11 at the third claim for relief in which the trustee alleged
12 that, as Pacific Steel's auditor, UHY had aided and abetted
13 the Speyside defendants' breach of fiduciary duty. (Docket
14 Number 148).

15 The Court dismissed the breach of fiduciary duty
16 claim against the Speyside defendants. The claim against
17 UHY for aiding and abetting breach of fiduciary duty
18 necessarily failed. (Docket Number 235, UHY's motion for
19 summary judgment order).

20 The remaining claims in the first amended
21 complaint are: the 4th, equitable subordination with
22 Speyside defendants' proof of claim; the 5th, avoidance of a
23 two-year intentional fraudulent transfers in \$3.6 million;
24 the 6th, avoidance of a two-year constructive fraudulent
25 transfers of \$3.6 million; the 10th, avoidance of a one-year

1 preferential transfer of \$3.6 million; the 11th, recovery of
2 preferential avoided transfers; the 12th, recharacterization
3 of \$3.95 million subordinated debt owed by Pacific Steel to
4 certain Speyside defendants as equity; the 13th,
5 disallowance of the Speyside defendants' \$828,000 proof of
6 claim, collectively the "remaining claims".

7 The recovery sought by the trustee on the
8 remaining claims is roughly \$4 million. All discovery is
9 completed and the remaining claims are ready for a trial
10 date. The Court is in a position to give the parties a
11 trial date in April of next year, depending on their
12 schedules.

13 The parties' arguments. The trustee and Second
14 Street seek Rule 54(b) certification of the summary judgment
15 orders and a stay of the litigation on the remaining claims
16 so they may pursue an immediate appeal. They begin with the
17 proposition that the summary judgment orders dispose of
18 certain claims and a certain party, but the Court must still
19 resolve the remaining claims.

20 They contend these orders should be treated as
21 final as the ultimate disposition of individual claims in a
22 multiple claim action and there is no just reason to delay
23 their appeal. They claim it is more efficient for the Court
24 and the parties to allow them to pursue an immediate appeal
25 while litigation of the remaining claims is stayed. They

1 also contend that the Court's ruling on the contingent
2 withdrawal liability issue is a "threshold issue" that
3 "impacts the entirety" of this litigation and "all aspects"
4 of it. (Docket Number 253, at Page 5, Lines 1 and 2, Page
5 8, Lines 13 through 15).

6 The Speyside defendants and UHY argue that
7 certification is not appropriate for several reasons. The
8 Speyside defendants point out that if the Court accepts the
9 trustee's proposition that the contingent withdrawal
10 liability permeates all aspects of this litigation, as she
11 has stated, the efficient course would be to dismiss the
12 remaining claims, paving the way for the trustee to pursue
13 an appeal covering the entire case. (Docket Number 272,
14 Speyside's opposition).

15 The Speyside defendants also argue that the
16 contingent withdrawal liability issue does not in fact
17 permeate or infect the remaining claims. This contingent
18 withdrawal liability issue does not control whether the
19 defendants' subordinated debt should be recharacterize as
20 equity or whether debtor's payment on the subordinated debt
21 should be avoided as preferential or fraudulent transfers or
22 whether the Speyside defendants' proof of claim should be
23 disallowed. (Docket Number 261, defendants' status
24 conference statement, and Docket Number 272, defendants'
25 opposition).

1 In addition, Speyside defendants argue that the
2 trustee and Second Street fail to make a case that there is
3 "no just reason for delay" for their appeal which Rule 54(b)
4 requires them to establish. They also point out the serious
5 risk of piecemeal appeals that would follow with
6 certification of these orders. (See description in their
7 status conference statement at 261 and UHY's description in
8 its opposition at Docket Number 270).

9 Second, with this summary in mind, the Court turns
10 to the analysis of how to apply Rule 54(b) to this case. In
11 general appellate courts only have jurisdiction to hear
12 appeals from final orders. 28 USC Section 1291.

13 And in general orders granting partial summary
14 judgment such as those here are not final orders. See Cheng
15 v. CIR, 878 F.2d 306, at 310 (9th Cir. 1989).

16 Rule 54(b), applicable here by Bankruptcy Rule
17 7054, provides an exception. It says when an action
18 presents more than one claim for relief or when multiple
19 parties are involved, the Court may direct entry of a final
20 judgment as to one or more but fewer than all claims or
21 parties only if the Court expressly determines that there is
22 no just reason for delay. Rule 54(b) provides a device for
23 parties to seek interlocutory review of orders that are not
24 truly final because they do not dispose of all of the claims
25 in a suit. This is our situation.

1 It is well-established that the Court is to engage
2 in a two-step process for a Rule 54(b) determination. See
3 Curtiss-Wright Corporation v. General Electric Company, 446
4 U.S. 1, at 7 (1980), following Sears, Roebuck v. Mackey, 351
5 U.S. 427, 436 (1956), defining final judgment for this
6 context.

7 First, is there a final judgment? It must be a
8 judgment in the sense that it is a decision upon a
9 cognizable claim for relief and it must be final in the
10 sense that it is the ultimate disposition of an individual
11 claim entered in the course of multiple claims' action. The
12 summary judgment orders are final in this sense. They
13 dispose of the claim described previously and they dispose
14 of UHY as a party. But the remaining claims are left to be
15 resolved between the trustee and the Speyside defendants.

16 Second, the Court must determine whether there is
17 no just reason for delaying an appeal because not all final
18 judgments on individual claims should be immediately
19 appealable, even if they are in some sense separable from
20 the remaining unresolved claims.

21 Here, the Court is to consider, one, the
22 interrelationship of the certified claims and the remaining
23 claims in light of the policy against piecemeal review and,
24 two, equitable factors such as prejudice and delay. See
25 Curtiss-Wright, Pages 8-10. See also Wood v. GCC Bend, LLC,

1 422 F.3d 873, at 879 (9th Cir. 2005).

2 Noting that sound judicial administration does not
3 require that Rule 54(b) certification requests be granted
4 routinely and absent a seriously important reasons, both the
5 spirit of Rule 1 and the interest of judicial administration
6 counsel against certifying claims or related issues in
7 remaining claims that are based on interlocking facts. See
8 *Tsyn v. Wells Fargo Advisors, LLC*, 216 Westlaw 7635883,
9 Footnote 2 (N.D. Cal. June 27, 2016), *JH Kelly LLC v. AECOM*
10 *Tech, Inc.*, 221 Westlaw 5712158, Footnote 2 (N.D. Cal.
11 December 2, 2021), certification denied with factual issues
12 on appeal similar to those in the remaining claims.

13 The burden is on the moving parties to demonstrate
14 that the case warrants Rule 54(b) certification.
15 Certification is not to be granted routinely, only when
16 there is a showing of pressing need for an immediate appeal.

17 As one court broadly described it, the main
18 concern will normally be to adopt the approach that most
19 efficiently disposes of the lawsuit. See *Tsyn v. Wells*
20 *Fargo Advisors*, 216 Westlaw 7635883, Footnote 4 (N.D. Cal.
21 2016).

22 The trustee and Second Street take the position
23 that there is no just reason for delay and it is efficient
24 to let them pursue an appeal now. They do not elaborate on
25 this point and they do not articulate any prejudice to them

1 if they are not allowed to appeal immediately nor do they
2 discuss the potential for piecemeal appeals that may result
3 from certification. Their position on the relationship
4 between the dismissed claims and the remaining claims is
5 somewhat baffling. They describe the contingent withdrawal
6 liability issue as threshold issue but do not explain why
7 they think it impacts the remaining claims.

8 The Ninth Circuit's decision in Continental
9 Airlines v. Goodyear, 819 F.2d 1519 (1987), is instructive.
10 In Continental, partial summary judgment was granted based
11 on exculpatory clauses in the contract. But this ruling did
12 not eliminate any parties and, unlike our case, left open a
13 chance of full recovery for plaintiffs on other theories.
14 However Rule 54(b) certification was proper because it
15 carved out threshold issues and streamlined the litigation
16 and the claims were seen as sufficiently severable factually
17 and legally.

18 This case is similar to Continental in that
19 partial summary judgment has been granted based on this
20 Court's interpretation of the asset purchase agreement which
21 eliminates certain theories of recovery and a large measure
22 of damages sought by the trustee.

23 But this case differs from Continental in that
24 certification will not streamline the litigation of the
25 remaining claims because it imposes a real risk of causing

1 delay rather than ameliorating it. And unlike the party who
2 sought certification in Continental, the trustee has taken
3 the position that the contingent withdrawal liability issue
4 is not severable. She describes it as impacting all aspects
5 of the litigation.

6 The Court acknowledges that the claims to be
7 appealed do not have to be separate from and independent
8 from the remaining claims if granting certification will
9 streamline what is left to be litigated. Bu severability of
10 issues, both factual and legal, does weigh in favor of
11 certification if it ensures that an appellate court will not
12 have to revisit the same issues multiple times.

13 A review of the first amended complaint reminds us
14 that there is one section entitled "Facts Applicable to All
15 Claims for Relief." (See Paragraphs 45-115, Docket Number
16 70).

17 The statement of facts covers the entire history
18 of Second Street's Chapter 11 case, its sale of adaptive to
19 Pacific Steel, Pacific Steel's operations from its inception
20 to its Chapter 7 filing. Here the dismissed claims all
21 depend upon the trustee's interpretation of the asset
22 purchase agreement. The remaining claims do not directly
23 depend on the interpretation of the asset purchase
24 agreement. In that sense, they are severable. However this
25 plausible separation is distinctly outweighed by the facts

1 in the complaint allege the same facts applied to each claim
2 and there is no clear prejudice to the trustee or Second
3 Street in completing the litigation in this Court and there
4 is apparent prejudice to the defendants in having to
5 prosecute an immediate appeal.

6 An immediate appeal is also an inefficient use of
7 the appellate court's resources and the attorneys' and the
8 parties' resources. This is especially true in light of the
9 fact that this Court will be able to try the remaining
10 claims within a matter of months which will make it possible
11 for one appeal of the entire litigation. Focusing on
12 efficient judicial administration, certification seems
13 unwise and unwarranted.

14 Focusing on the equities of granting
15 certification, certification also seems unwarranted. There
16 is no apparent prejudice to including the litigation here
17 and certification will only delay completing the litigation
18 and has the potential to add unnecessary delays and
19 complications. This is not an unusual case where the cost
20 of overcrowding an appellate docket is outbalanced by the
21 pressing needs of the litigants, and accordingly the motion
22 is denied.

23 With that being said, my suggestion is that I
24 would continue for a further status conference in January.
25 As you all are aware, I'm retiring January 31st of next

1 year. I've been advised by our chief judge that my cases
2 are being divided between the two Oakland judges by even/odd
3 numbers, and Judge Lafferty will be designated to take over
4 this litigation.

5 And Mr. Toral, if you're not aware, which I think
6 you are, Judge Lafferty did handle a mediation between the
7 union and Second Street. So if parties believe that's a
8 conflict, they may want to discuss that. If not, Judge
9 Lafferty has advised me that he'd be prepared to try this
10 case in April, and in the event that the parties or Judge
11 Lafferty believe that's a conflict that can't be overcome,
12 Judge Novack has advised me that he will be prepared to try
13 this case in the spring as well.

14 So does it make sense to give you a continued
15 status conference date, and I would also trail the
16 creditors' objections to that status conference date? And I
17 would -- I could suggest giving you the -- I can either do
18 it late in the month or I could do it on the -- I could
19 either to the 12th or the 26th of January.

20 MS. BAGDANOV: Your Honor, from the trustee,
21 honestly I don't think I have a preference. So if other
22 parties have conflicts.

23 THE COURT: Okay.

24 MR. TORAL: Your Honor, the 12th or the 26th, I am
25 agnostic as well and available.

1 THE COURT: Okay. All right. Then what I will do
2 is I will put this over for a further status conference on
3 both matters to the January 26th date, and that will be at
4 11 o'clock. The Court hopes to get its final decision out
5 in the near future on the UHY matter, and if counsel wants
6 to revise the motion that I've taken off calendar with
7 regard to UHY, the Court's decision on that, that can be re-
8 noticed if after reviewing the Court's decision on the
9 motion for summary judgment filed by UHY. Do the parties
10 have anything else they wish to add?

11 MS. BAGDANOV: Your Honor, would you care for a
12 status report before January 26th? I don't know what I
13 would say in it. But --

14 THE COURT: I think maybe the thing would be just
15 to discuss how long you think the trial is going to go.

16 MS. BAGDANOV: Sure.

17 THE COURT: I think Mr. Toral has indicated
18 somewhere between three to five days, the number of
19 witnesses, documents, the timing I think would be the only
20 thing that I would really need.

21 MS. BAGDANOV: You got it.

22 THE COURT: And then also if the parties would
23 discuss that if they think that Judge Lafferty would have a
24 conflict because he handled this mediation between the union
25 and Second Street, address that issue because if that's the

1 case, it would be better to have the matter assigned then to
2 our chief judge, which that will now be -- he'll be retired
3 -- the chief judge -- Judge Novack would take over that.

4 MS. BAGDANOV: Okay.

5 THE COURT: Okay.

6 MR. TORAL: Your Honor, just briefly with respect
7 to the disclosure of the mediation between the union and
8 Second Street, I was not aware of that. So I have no
9 knowledge about it. I'm going to have to investigate. But
10 once I find out what the facts are best I can, I'm happy to
11 meet and confer with Ms. Bagdanov about that issue.

12 THE COURT: Okay. Very good.

13 MR. LAUTER: Your Honor, there was a mediation.
14 So there's no like public briefing or anything about it.
15 But I participated and I can tell you -- I'm not saying what
16 folks -- what position folks should take. I'm just
17 explaining it.

18 The union in the Berkeley Properties bankruptcy
19 case argued that certain cash that the Berkeley -- that
20 Berkeley Properties had as the debtor was the proceeds of
21 rents from the property and therefore was covered by the
22 deed of trust. It was like they were arguing that they had
23 a secured lien on all of our cash because it was rents and
24 we said it wasn't rents. And so we went to a mediation in
25 January of 2021, I think it was. And it didn't settle.

1 MR. TORAL: Understood.

2 THE COURT: So I just wanted to bring that to your
3 attention, Mr. Toral, and other counsel may not have been
4 aware of that. And again, I'm not looking for a resolution
5 before I leave the bench. But it's just something I wanted
6 to bring to your attention so that if that is going to
7 affect which judge may end up having these proceedings
8 assigned to, again, I don't want to cause any delay. I
9 wanted to alert everybody to that, okay?

10 MS. BAGDANOV: Thank you, Your Honor. When would
11 you like the status report? Two weeks before?

12 THE COURT: That would be sufficient.

13 MS. BAGDANOV: Yes, Your Honor.

14 THE COURT: All right. Anything else?

15 MS. QUADROZZI: No, Your Honor.

16 MS. BAGDANOV: Thank you, Your Honor.

17 MR. LAUTER: No, Your Honor.

18 MR. TORAL: No, Your Honor.

19 THE COURT: All right. Very good. Then we are
20 adjourned today. Thank you.

21 MR. TORAL: Thank you.

22 MS. BAGDANOV: Thank you.

23 MR. LAUTER: Thank you.

24 (Whereupon these proceedings were concluded at
25 2:59 PM)

I N D E X

RULINGS

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Joint Motion for Certification of
 Partial Final Judgment and Entry of
 Temporary Stay filed by Sarah Little
 filed by Defendant UHY, LLP, a New York
 limited liability partnership [252]

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C E R T I F I C A T I O N

I, Benjamin Graham, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Benjamin Graham, CET #1394

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